IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CMPMO No. 332 of 2004.

Date of Decision: 6th November, 2006.

M/s Krishan Singh Gurbax Singh **Petitioner.**

Versus

Bhagiu and others. **Respondents.**

Coram
The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting[1]?

For the Petitioner: **Mr. G.C. Gupta, Senior Advocate, with Mr. Mohinder Gautam, Advocate.**

For the respondent: **Mr. Rahul Mahajan, Advocate for respondent No.1.**

V.K. Gupta, C.J. (Oral).

Mr. Rahul Mahajan, learned counsel appearing for respondent No.1, who was the complainant before the District Consumer Disputes Redressal Forum, Shimla (District Forum for short) very fairly and frankly submits that this case is identical both on facts and in law to CMPMO No.333 of 2004 decided on 17th July, 2006 and that if this Court considers it appropriate, it may pass in the present case also the same order which it had passed in the aforesaid case. Mr. G.C. Gupta, learned Senior Counsel appearing for

---

[1] Whether reporters of the Local Papers are allowed to see the Judgment?

the petitioner agrees to this course of action being adopted.

In CMPMO No.333 of 2004, this Court had passed a judgment on 17th July, 2006 whereby, taking note of the peculiar facts and circumstances of that case, this Court had adopted a course of action by setting aside the order passed by the District Forum in that case whereby non-bailable warrants had been issued against the petitioner in that case. This Court had also set aside the ex-parte order passed by the District Forum by allowing the application of the petitioner in that case.

The facts of the present case are identical as well as equally peculiar warranting the exercise of this Court's jurisdiction under Article 227 of the Constitution of India because it is noticed by this Court in the present case and, with pain and anguish, that the District Forum rather than passing appropriate orders on the petitioner's application filed under Order 9 Rule 13 of the Code of Civil Procedure proceeded to issue non-bailable warrants against him despite the fact that he was duly represented before the District Forum even on 22nd September, 2004 by a counsel engaged by him. The objections

in the execution application were also summarily rejected by the District Forum without passing a speaking order.

The aforesaid course of action adopted by the District Forum was quite exceptional and untenable. It should have first considered the petitioner's application under Order 9 Rule 13 and thereafter proceeded to pass consequential order.

Because of the aforesaid peculiar circumstances of the case and the fact that the judgment dated 17th July, 2006 passed in CMPMO No.333 of 2004 is squarely applicable to this case as well, I set aside the impugned order dated 22nd September, 2004 passed by the District Forum. I also hereby allow the petitioner's application filed under Order 9 Rule 13 of the Code of Civil Procedure and direct that the ex-parte order passed by the District Forum on 24th November, 2003 shall stand set aside. The complaint filed by respondent No.1 against the petitioner and respondent No.2, being complaint No.42 of 2003 shall stand revived. The petitioner shall file its reply to the aforesaid complaint. The District Forum shall ensure that respondent No.2 in the complaint is also served

notice before proceeding any further in the matter. Thereafter the District Forum shall proceed to dispose of the complaint on its merits and in accordance with law and pass consequential orders therein.

While considering and disposing of the complaint finally, the District Forum shall first and foremost decide whether the complaint based upon the facts mentioned therein is at all maintainable in view of some specific provisions of the Consumer Protection Act, 1986. First and foremost it shall consider and decide whether the complainant is a "consumer" within the meaning of Section 2(d) of 1986 Act because Section 12 of 1986 Act clearly and without any doubt stipulates that a complaint can be filed only either by a consumer or by any recognized consumer association or by the Central or State Government. It shall thereafter proceed to consider and decide whether the subject matter of the complaint comes within the purview of a "consumer dispute" and further, whether the mere claim of the complainant for payment of the price of goods allegedly sold can form the basis and the subject matter of an adjudication before the

District Forum under the scheme and the provisions of the 1986 Act.

The petitioner and respondent No.1 through their learned counsel are directed to appear before the District Forum on 15th November, 2006.

The petition is disposed of. No order as to costs.

CMP No.518 of 2004.

In view of the disposal of the main petition, this application is also disposed of. Interim order dated 30th September, 2004 shall stand vacated.

6th November, 2006. (V.K. Gupta), C.J.
(tr)